## BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C. 20554

IN THE MATTER OF \$
SECTION 272(f)(1) SUNSET OF THE \$
BOC SEPARATE AFFILIATE AND \$ WC DOCKET NO. 02-112
RELATED REQUIREMENTS \$

## COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS ON THE PETITION OF AT&T TO EXTEND THE SECTION 272 OBLIGATIONS OF SOUTHWESTERN BELL TELEPHONE CO. IN THE STATE OF TEXAS

**NOW COMES THE STATE OF TEXAS (State)**, by and through the Office of The Attorney General of Texas, Consumer Protection Division and files these its comments on the *Petition of AT&T Corp. for Extension of the Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas*, filed on April 10, 2003. These comments are timely filed pursuant to the Commission's subsequent order in DA-03-1439.

The Office of the Attorney General submits these comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas. We previously commented in this docket in favor of the extension of the separate affiliate requirements in general, primarily due to the easily observable market conditions in Texas, which strongly weigh in favor of such an extension. We now also support the Petition of AT&T to continue the separate affiliate requirement for Southwestern Bell Telephone Co. ("SWBT") in the state of Texas for the following reasons:

A) The Texas PUC has supported an extension of the requirements for a separate affiliate.

In its comments filed in this docket last summer, the Texas Public Utility Commission

expressed strong support for extension of the separate affiliate requirements in Texas due to its dominance of the local service market. AT&T *Petition* at 4. The Commission also gave as a primary reason for extending the requirements continued dominance of SWBT over local exchange and exchange access services. Id. The Commission also stated that the non-accounting safeguards provided by section 272 of the Telecommunications Act are the only effective means of monitoring SWBT's fulfillment of its open access obligations. AT &T Petition at 18. No regulatory authority could or should have a better understanding of the state of the telecommunications marketplace in Texas than the Texas Public Utility Commission, and it has

expressed its concerns plainly, in support of an extension of the separate affiliate requirement.

## B) Facilities -based competition has not sufficiently developed in Texas.

SWBT continues to possess substantial market power in the provision of end-user

connections and therefore has an incentive to discriminate, as almost all competitors are still dependent upon SWBT for the provision of facilities. The Texas Public Utility Commission's report, Scope of Competition in Telecommunications Markets of Texas (January 2003), reflects that facilities-based competition has really never developed in Texas. Scope of Competition at 20-22. The report also reflects a recent loss of market share by competitive carriers in Texas. Scope of Competition at 20. It is therefore plain to see that the local market power dominance which the

separate affiliate requirement was designed to mitigate still exists, and therefore the need for a separate affiliate to allow monitoring of market behavior has not disappeared, as congress envisioned that it might, with its provision that the requirement would last a minimum of three years. 47 U.S.C. §272(f)(1). Further, the last two years have seen the exit of numerous competitive LECs from the marketplace, increasing the market dominance of SWBT in Texas, and lending credence to allegations that market power abuse may, in fact, exist.

## C) The separate affiliate requirements are needed to ensure equitable treatment of competitors.

The information made available by the existence of separate SWBT affiliates must be used to ensure that anti-competitive conduct is not occurring. Without a separate affiliate requirement, the independent information about SWBT's conduct in the wholesale market would likely cease to be available, leaving no adequate means for market oversight. Ensuring equal treatment of

been seen in the Texas Public Utility Commission's recent audit of SWBT's performance measures under its 271 authorization. The staff recommendations resulting from an analysis of that audit state, in pertinent part, as follows: "Staff finds that...HP performed the audit substantially in accord with the audit plan and the contract, despite a number of challenges, including but not limited to: occasional obsolete, inaccurate, incomplete and missing SBC system documentation, occasional SBC delays in responding to HP information requests, continuous SBC resistance to independent

competitive carriers is by no means assured, even with the separate affiliate requirements, as has

to capture anywhere from 6.55 to 10% or more of relevant CLEC transactions is disturbing and

verification, relative inflexibility of SBC legacy system architecture....Staff also notes that the failure

warrants further investigation, irrespective of the impact the improperly excluded transactions might

have on SBC's performance." Staff Recommendations on Issues Raised by SBC and CLECs (April

8, 2003) at pages 5-8, Project 20400-§271 Compliance Monitoring of Southwestern Bell Telephone

Company.

From the above, as well as the numerous instances of discriminatory performance reflected by AT&T on pages14-17 of its *Petition*, it is clear that a continued need for market oversight, which can only be effectively provided through the continuation of the separate affiliate requirement, exists. It is for these reasons that we support AT&T's petition.

The Office of the Attorney General of Texas appreciates this opportunity to provide comments in support of this Petition.

Respectfully submitted,

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